



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9666]

RIN 1545-BL79

Alternative Simplified Credit Election

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the election of the alternative simplified credit. The final and temporary regulations will affect certain taxpayers claiming the credit. The text of these temporary regulations also serves as the text of the proposed regulations (REG-133495-13) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on **[INSERT DATE THAT**

**THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §1.41-9T(d).

FOR FURTHER INFORMATION CONTACT: David Selig (202) 317-4137 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

## **Background**

This document amends 26 CFR part 1 to provide rules relating to the election of the alternative simplified credit (ASC) under section 41(c)(5) of the Internal Revenue Code (Code).

Section 41(a) provides an incremental tax credit for increasing research activities (research credit) based on a percentage of a taxpayer's qualified research expenses (QREs) above a base amount. A taxpayer can apply the rules and credit rate percentages under section 41(a)(1) to calculate the credit (commonly referred to as the regular credit) or a taxpayer can make an election to apply the ASC rules and credit rate percentages under section 41(c)(5) to calculate the credit. Section 41(c)(5)(C) provides that an ASC election under section 41(c)(5) applies to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

On June 10, 2011, the Treasury Department and the IRS published final regulations (TD 9528) in the **Federal Register** (76 FR 33994) relating to the election and calculation of the ASC. Section 1.41-9(b)(2) provides that a taxpayer makes an election under section 41(c)(5) by completing the portion of Form 6765, "Credit for Increasing Research Activities," (or successor form) relating to the ASC election, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. Section 1.41-9(b)(2) also provides that a taxpayer may not make an election under section 41(c)(5) on an amended return and that an extension of time to make an election under section 41(c)(5) will not be granted under §301.9100-3.

## **Explanation of Provisions**

Following the publication of TD 9528, the Treasury Department and the IRS received requests to amend the regulations to allow taxpayers to make an ASC election on an amended return. The requests explained that the burden of substantiating expenditures and costs for the base period under the regular credit can be costly, time-consuming, and difficult, and suggested that taxpayers often need additional time to determine whether to claim the regular credit or the ASC.

In response to these requests, this Treasury Decision provides final and temporary regulations. The final regulations remove the rule in §1.41-9(b)(2) that prohibits a taxpayer from making an ASC election for a tax year on an amended return. In its place, these temporary regulations provide a rule that allows a taxpayer to make an ASC election for a tax year on an amended return. However, permitting changes from the regular credit to the ASC on amended returns could result in more than one audit of a taxpayer's research credit for a tax year. Accordingly, the temporary regulations provide that a taxpayer that previously claimed, on an original or amended return, a section 41 credit for a tax year may not make an ASC election for that tax year on an amended return. In addition, the temporary regulations provide that a taxpayer that is a member of a controlled group in a tax year may not make an election under section 41(c)(5) for that tax year on an amended return if any member of the controlled group for that year previously claimed the research credit using a method other than the ASC on an original or amended return for that tax year. As with all claims under section 41, taxpayers must maintain sufficient books and records to substantiate the credit on

the amended returns.

### **Effective/Applicability Date**

These regulations apply to elections with respect to taxable years ending on or after **[INSERT DATE THAT THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**. In addition, a taxpayer may rely on §1.41-9T(b)(2) to make an election under section 41(c)(5) for a tax year ending prior to **[INSERT DATE THAT THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]** if the taxpayer makes the election before the period of limitations for assessment of tax has expired for that year.

These regulations expire on June 2, 2017.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act, refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## **Drafting Information**

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

## **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

## **Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.41-9T also issued under 26 U.S.C. 41(c)(5)(C). \* \* \*

#### **§1.41-9 Alternative simplified credit.**

Par. 2. Section 1.41-9 is amended by revising paragraph (b)(2) to read as follows:

\* \* \* \* \*

(b) \* \* \*

(2) [Reserved]. For further guidance, see §1.41-9T(b)(2).

\* \* \* \* \*

Par. 3. Section 1.41-9T is added to read as follows:

§1.41-9T Alternative simplified credit (temporary).

(a) through (b)(1) [Reserved]. For further guidance, see §1.41-9(a) through (b)(1).

(2) Time and manner of election. A taxpayer makes an election under section 41(c)(5) by completing the portion of Form 6765, "Credit for Increasing Research Activities," (or successor form) relating to the election of the ASC, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. A taxpayer may make an election under section 41(c)(5) for a tax year on an amended return, but only if the taxpayer has not previously claimed the section 41 credit on its original return or an amended return for that tax year. An extension of time to make an election under section 41(c)(5) will not be granted under §301.9100-3 of this chapter. A taxpayer that is a member of a controlled group in a tax year may not make an election under section 41(c)(5) for that tax year on an amended return if any member of the controlled group for that tax year previously claimed the research credit using a method other than the ASC on an original or amended return for that tax year. See paragraph (b)(4) of this section for additional rules concerning controlled groups. See also 1.41-6(b)(1) requiring that all members of the controlled group use the same method of computation.

(b)(3) through (c) [Reserved]. For further guidance, see §1.41-9(b)(3) through (c).

(d) Effective/applicability date. Paragraph (b)(2) of this section applies to elections with respect to taxable years ending on or after **[INSERT DATE THAT THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**. In addition, a taxpayer may rely on paragraph (b)(2) of this section to make an election under section 41(c)(5) for a tax year ending prior to **[INSERT DATE THAT THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]** if the taxpayer makes the election before the period of limitations for assessment of tax has expired for that year. Otherwise, for elections with respect to taxable years ending before **[INSERT DATE THAT THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**, see §1.41-9(b)(2) as contained in 26 CFR part 1, revised April 1, 2014.

(e) Expiration date. This section expires on June 2, 2017.

John Dalrymple

Deputy Commissioner for Services and Enforcement.

Approved: May 2, 2014

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).

Publication Date: 06/03/2014]